BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PHASE I PROPOSED DECISION

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REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PHASE I PROPOSED DECISION

The Division of Ratepayer Advocates (DRA) submits these reply comments in response to opening comments on the Proposed Decision (PD) in this proceeding. DRA reiterates its support for the PD, but supports modifying the PD to 1) allow "unspecified" contracts and substitute resources if each of the resources providing the energy would meet the Emissions Performance Standard (EPS); 2) require pre-approval for all long-term contracts for baseload generation; and 3) clarify when contracts will be considered "linked" for purposes of requiring long-term financial commitments to meet EPS requirements.

I. THE PD'S REQUIREMENT THAT COVERED PROCUREMENT MUST BE FROM SPECIFIED RESOURCES IS CONSISTENT WITH THE GOALS OF SB 1368.

Sacramento Municipal Utility District (SMUD) requests that the Commission change the PD "to allow system and other resources that are not unit specific."[1] SMUD argues that the PD's decision to ban unspecified resources does not comply with Public Utility Code Section 8341(d)(7)'s requirement that the CPUC "address long-term purchases of electricity from unspecified sources in a manner consistent with" SB 1368. SMUD argues that since SB 1368 does not include an outright ban on purchases from unspecified resources, the Commission may not enact such a ban. SMUD's argument misconstrues the meaning of "address." "Address" as used in Section 8341 means to "deal with" or "turn one's attention to."[2] Thus, the Legislature directed the CPUC to "deal with" unspecified resources in a manner consistent with the statute as a whole, but falls short of requiring the Commission to either allow or prohibit their use, leaving the ultimate disposition to the Commission.

The PD reasonably concludes that allowing long-term contracts for unspecified resources would be inconsistent with two important and intertwined objectives of SB 1368: that load serving entities (LSE's) enter into long-term financial commitments with baseload generation that comply with the EPS, and that EPS compliance cannot be achieved by allowing LSE's to execute long-term commitments with high-emitting sources.[3] Thus, the PD declined to impute emissions rate for unspecified contracts and instead would require all long-term commitments that enter the gateway be for specified resources.

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[1] Comments of the Sacramento Municipal Utility District on the December 13, 2006 Proposed Decision (SMUD comments), p.2.

[2]; Miriam-Webster online dictionary, http://www.m-w.com/dictionary/address.

[3] PD, p. 115.

SMUD argues that some publicly owned utilities (POUs) rely on long term contracts for unspecified resources,[4] and that disallowing such contracts would impair the ability of those POUs to provide reliable and reasonably priced power to their customers. This argument is not persuasive. The POUs will be required to comply with the EPS adopted by the California Energy Commission (CEC) on June 30, 2007. By January 1, 2008 the California Air Resources Board will be required to establish mandatory GHG reporting and verification and all power contracts will need to provide verifiable GHG emissions documentation. Thus, it appears that SMUD is requesting a six-month window in which POUs would be able to continue executing long term contracts for unspecified resources. Although SMUD argues for special treatment for unspecified resources for POUs, the evidence in this proceeding does not support such a finding.

However, SMUD discussed one circumstance in which the use of "unspecified" contracts would not contravene the goals of SB 1368. SMUD described certain contracts in which the type of resource is specified, even though the contract is not for a specific unit. SMUD explains that the terms could be for all hydroelectric resources or all geothermal resources or all combined cycle gas turbine resources. Allowing contracts from a group of power sources which would each meet the EPS is consistent with the goals of SB 1368, and to the extent the PD would otherwise prohibit such contracts, DRA recommends clarifying the PD to allow them.[5]

II. THE PD SHOULD BE CLARIFIED TO PROVIDE UPFRONT GUIDANCE REGARDING WHEN CONTRACTS WILL BE "LINKED" FOR PURPOSES OF DETERMINING WHETHER THEY RESULT IN A LONG-TERM FINANCIAL COMMITMENT SUBJECT TO THE GATEWAY.

The PD includes provisions designed to prevent LSEs from circumventing the EPS by entering into a series of less-than-five-years contracts with the same facility[6]. However, the PD does not indicate how the

[4] As discussed in footnote 153 of the PD at page 120, CEC staff has indicated they are aware the POUs, unlike the investor owned utilities, may be planning to enter into long term contracts for unspecified power in the future. CEC, as the PD points out, must consider the circumstances of the POUs as well as the legal requirements of SB 1368 in determining whether to allow POUs to execute long term contract for unspecified resources.

[5] Similarly, Pacific Gas and Electric Company's (PG&E) request that up to fifteen percent substitute energy should be allowed in contracts to address conditions such as forced outages, scheduled maintenance, or to meet operating conditions of the contact, such as ramp rates and minimum number of hours, would be consistent wit SB 1368 if the resources underlying the "substitute energy" all met the EPS

[6] Finding of Fact 162 currently states that "Disclosure of short-term contracts is necessary to ensure that LSEs do not circumvent the EPS rule by entering into a series of contracts with terms of less than five years with the same supplier, resource or facility." DRA opines that a series of less-than-five-years contracts with the same supplier should not matter as long as the underlying facilities are different, since the EPS is facility-based and not supplier-based.

Commission would make such determination.[7] DRA agrees with SCE that the PD should clarify the standard(s) that the Commission will use to determine whether multiple contracts are linked for purposes of meeting the EPS rules.

SCE proposes two alternative recommendations. First, if two contracts are "independent" of each other, the Commission should not consider them linked", with the term "independent" meaning the selection of one contract does not require the selection of the other. DRA objects to this proposal, which places a heavy burden on Commission staff to review the detailed contract language in order to determine the "independence" of each contract. The alternative SCE recommendation appears more workable, with linkages for multiple contracts established under one of the following two circumstances: (1) the contracts specify the same generating unit as the primary source and the gap in contract execution dates is 6 months or less; (2) the contracts do not specify the generation source, are with the same supplier, specify the same delivery point, and are executed within 24 hours. DRA supports using these two criteria if the first criterion is modified to reflect a 12-month gap between contract execution dates to make evasion of the EPS rules more difficult.

To effectively implement the above criteria, DRA further recommends that the Commission requires the following information as part of the LSE's disclosure submittals: name of generating unit (if available), location of generation unit, contract start date, contract end date, contract execution date and time, supplier name, supplier tax ID, and delivery location. The Commission may request that the LSEs jointly propose a common reporting format for the disclosure information. As discussed in the Documentation Requirements section of the PD, the investor owned utilities (IOUs) are required to submit their disclosure as part of their Quarterly Procurement Plan Compliance Reports, while the non-IOU LSEs can provide this information in an annual Attestation Letter, which as discussed below in Section III, should not include their long-term financial commitments and therefore should not be subjected to an advice letter process.[8]

III. THE PD SHOULD BE CLARIFIED TO REQUIRE UPFRONT PRE-APPROVAL FOR ANY LONG-TERM FINANCIAL COMMITMENT INVOLVING BASELOAD GENERATION.

The opening comments, the Natural Resources Defense Council et al. argue that pre-approval by the Commission prior to execution of any contract for any long-term financial commitment involving baseload generation should be required of all LSEs, including electric service providers (ESPs), community

[7] Public Utilities Code Section 454.5(c)(3) states that "Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction."

[8] The PD recommends that the Attestation Letters of non-IOU LSE's be filed as an advice letter.

choice aggregators (CCAs) and small electrical corporations. DRA agrees that pre-approval of covered procurements is the "most administratively simple and effective means of enforcing the EPS."[9]

Pre-approval in the form of an advice letter process for ESPs, CCAs and small electrical corporations is administratively more straightforward for the Commission to execute than the after-the-fact Attestation Letter process proposed in the Draft Decision. In its opening comments, AReM admitted that its ESP members are "likely to enter into very few, if any, new long-term commitments during the next few years that would be deemed 'covered procurement.'"[10] Thus, the Commission will likely process very few pre-approval advice letters from these non-IOU LSEs. In contrast, under an Attestation Letter process, Energy Division will need to review and approve advice letters from each non-IOU LSE every year, and may need to conduct further audits to enforce compliance with the EPS.

Furthermore, as AReM points out in its opening comments, "the review and approval process for Attestation Letter filings lacks finality."[11] CCSF also protests the "imposition of unspecified penalties, pursuant to unspecified procedures" that may result from the Attestation Letter filings.[12] An upfront pre-approval avoids such ambiguities and provides assurance to the LSEs that a procurement plan or contract, once approved, will not be subjected to further scrutiny.

Section 8341 (b) (2) states that "The commission may, in order to enforce the requirements of this section, review any long-term financial commitment proposed to be entered into by an electric service provider or a community choice aggregator." Therefore, a Commission requirement of all ESPs and CCAs to obtain approval of proposed long-term financial commitment is consistent with the law.

IV. THE RECORD IN THIS PROCEEDING DOES NOT SUPPORT THE CLAIM THAT THE PD'S ADOPTION OF AN EPS OF 1,000 POUNDS OF CARBON DIOXIDE PER MEGAWATT HOUR IS TOO ONEROUS FOR SMALL POWER PLANTS.

The Northern California Power Association (NCPA) argues that the 1000 lbs of CO2 per MWh emissions rate is too stringent for smaller units. DRA disputes NCPA's assertion that a new 250MW powerplant based on state-of-the art GE Frame 7EA combustion turbines would not comply with the proposed EPS of 1000 lbs per MWh. According to the GE website,[13] the Frame 7EA, which can be used to

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[9] Comments of NRDC, TURN, and UCS on the Draft "Interim Opinion on Phase 1 Issues", January 2, 2007, p.5.

[10] Opening comments of the Alliance for Retail Energy Markets on the Proposed decision of President Peevey and ALJ Gottstein, January 2, 2007, p.2.

[11] Id, p.3.

[12] Comments of the City and County of San Francisco on the Proposed Decision of President Peevey and ALJ Gottstein, January 2, 2007, p. 10.

[13] http://www.gepower.com/prod_serv/products/gas_turbines_cc/en/downloads/gasturbine_cc_products.pdf

operate smaller size unit, has a heat rate ranging between 7,173 or 7,067 when operated as a combined cycle gas turbine (CCGT) depending on the model.[14] Operated as a simple cycle, the heat rate is much higher. However, it should be assumed that if the unit provides baseload energy, it would be run as a CCGT due to increased efficiency.

In revisiting the existing emissions rates collected during the workshop, DRA notes that in 2005, only one combined cycle plant with weighted average capacity factor greater than 60%, Carson Cogeneration (52MW), exceeds the 1000 lbs/MWh emission rate (reported emissions rate 1006 lbs/MWh); in 2004, there were three combined cycle plants with weighted average capacity factor greater than 60% exceed the 1000 lbs/MWh emissions rate – Carson Ice CG (56MW), 1002 lbs/MWh; Carson Cogeneration (52MW), 1009 lbs/MWh; and SCA Cogen 2 (109MW), 1058 lbs/MWh. All these plants are however reported as cogeneration plants, and therefore if the cogeneration thermal energy output is taken into consideration, the emissions rate should fall within the 1000 lbs/MWh limit. If there are small municipal utilities that cannot meet the EPS, then CEC can consider whether an exception to the EPS requirements is warranted.

V. CONCLUSION

DRA respectfully requests that the Commission adopt the well reasoned decision of President Peevey and Administrative Law Judge Gottstein, which is consistent with the record and supported by law, but recommends modifying the PD as described above.

Respectfully submitted,

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[14] Based on the conversion formula used in the workshop, where CO2 in lbs/MWh = Plant Heat Rate times 0.1164, the maximum acceptable plant heat rate at 1000 lbs/MWh is calculated as 1000/.1164 = 8591 BTU/kWh.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTSOF THE DIVISION OF RATEPAYER ADVOCATES ON THE PHASE 1 PROPOSED DECISION** in **R.06-04-009** by using the following service:

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Executed on January 8, 2007 at San Francisco, California.

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